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1 considerations from an engine standpoint do you  
2 look at and say, the C12 engine is suitable for  
3 these characteristics?

4 And if that's another way of  
5 getting at that I'll withdraw the last question  
6 and get at that.

7 MR. GRUNERT: I still object.

8 But if you can answer that question go ahead.

9 MR. SAMITO: Off the record.

10 (Discussion off the record.)

11 BY MR. SAMITO:

12 Q. I'll get at it another way. Were C12  
13 engines appropriate for fuel hauler and dump  
14 trailer operations in the New England area?

15 A. Yes.

16 Q. Were the C12 engines appropriate for  
17 Trans-Spec's trucks as they were spec'd?

18 MR. GRUNERT: Object to the form.

19 THE WITNESS: I don't know

20 because I don't know what exactly was spec'd on  
21 them.

22 BY MR. SAMITO:

23 Q. Has Caterpillar ever received the spec'g

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1 details as part of its pre-litigation  
2 investigation?

3 A. We may, I believe we have like, I believe  
4 we have build sheets somewhere here.

5 MR. GRUNERT: I think there's one  
6 in those 6SIGMA documents.

7 THE WITNESS: Okay. There we go.  
8 Can you restate your question again?

9 BY MR. SAMITO:

10 Q. Sure. Were the C12 engines appropriate  
11 for Trans-Spec's trucks as they were spec'd or  
12 designed?

13 MR. GRUNERT: Object in so far as  
14 you're seeking an expert opinion. If you can  
15 answer that question without offering expert  
16 opinions go ahead and answer.

17 THE WITNESS: We, Caterpillar  
18 sells engines to the truck manufacturer and the  
19 truck manufacturer specs those according to  
20 what the customers want when they order the  
21 trucks.

22 So I'm not directly involved in  
23 approving or disapproving what they are going

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1 to build for a, you know, particular customer.  
2 So I don't know. I can't answer that.

3 BY MR. SAMITO:

4 Q. Does Caterpillar provide its performance  
5 data in its specifications for its various  
6 engines for inclusion in spec'g programs used  
7 by OEMs?

8 A. I think we do. We do send out information  
9 on heat rejection, performance, torque, those  
10 types of things that they can use if they want  
11 in their spec'g program.

12 Q. Does Caterpillar have any specific spec'g  
13 program that it uses?

14 A. There's a program called Design Pro that  
15 is used to make sure that the truck axle ratios  
16 and gear ratios are set up to get optimum fuel  
17 economy, and usually it's startability and  
18 gradeability is often looked at in that.

19 Q. Who would use that in terms of dealing  
20 with a customer?

21 A. And I don't get into this a lot, it's on  
22 the sales side of the business, but it would  
23 be, I believe it would be provided to an OEM

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1 dealer and/or our Caterpillar dealers.

2 The people involved in sales  
3 there would have that software.

4 Q. So in Massachusetts Southworth Milton  
5 would have that software?

6 A. I believe they do.

7 Q. Is it generally common to have flywheel  
8 housing failures in engines?

9 A. No, it's not common.

10 Q. Do you know what sort of damage a failed  
11 flywheel housing can do to an engine?

12 A. I don't know what kind of damage it would  
13 do to the engine. Obviously, you know, the  
14 flywheel housing would be non-usable if it's  
15 cracked.

16 And because of the, obviously to  
17 get at it you'd pull the transmission out.  
18 It's an expensive repair.

19 Q. Do you know what sort of damage a failed  
20 flywheel house can do to a truck as a whole?

21 A. Again, it would, the truck would have to  
22 be pulled out of service to be repaired.

23 Q. Would it do damage to the clutch?

EXHIBIT

Legalink Boston  
(617) 542-0039

35 (Pages 134 to 137)

tabbles

Exhibit A

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1 Q. What's the fix for the problem?  
 2 MR. GRUNERT: Same objection.  
 3 BY MR. SAMITO:  
 4 Q. Does Caterpillar have a fix for the  
 5 problem?  
 6 MR. GRUNERT: Object to the form.  
 7 Truck Services' problem?  
 8 MR. SAMITO: For the problems  
 9 with the flywheel houses.  
 10 MR. GRUNERT: Well, I object to  
 11 the form. You have not established that there  
 12 is a problem with the flywheel housings.  
 13 BY MR. SAMITO:  
 14 Q. Why was the 6SIGMA team formed?  
 15 A. To investigate complaints on the flywheel  
 16 housings.  
 17 Q. Is the 6SIGMA team formed for every time  
 18 there's a complaint on any engine part?  
 19 A. Lots of times it is.  
 20 Q. So if a single complaint comes in a 6SIGMA  
 21 team will be formed?  
 22 A. Not a single complaint.  
 23 Q. How, what triggers it? What is your

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1 cutoff?  
 2 A. Three failures.  
 3 Q. Three failures? And in this case how many  
 4 failures before the 6SIGMA team was triggered?  
 5 A. At the time that we formed the team there  
 6 was probably a hundred failures.  
 7 Q. Did the 6SIGMA team focus just on  
 8 Trans-Spec's trucks or on C12 flywheels in  
 9 general?  
 10 A. We --  
 11 Q. Or were there two teams?  
 12 A. No. We started the team based on  
 13 Trans-Spec's complaints and then we broadened  
 14 it to see if there was a bigger problem.  
 15 Q. So when you first looked at Trans-Spec's  
 16 problems, what was the permanent fix for  
 17 Trans-Spec's problems?  
 18 A. We could not find the root cause.  
 19 Q. How about for the broader, when you  
 20 broadened out what was the permanent fix that  
 21 the team came up with?  
 22 MR. GRUNERT: Object to the form.  
 23 There was no need for a permanent fix.

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1 BY MR. SAMITO:  
 2 Q. What was the fix for the trucks that were  
 3 having problems or failures with the flywheel  
 4 housings and the flywheel housing bolts?  
 5 A. Say again.  
 6 MR. GRUNERT: In addition to the  
 7 ones he's told you about? The Oshkosh ones?  
 8 MR. SAMITO: In general. In  
 9 general. All, all, all of the, all of the  
 10 trucks that the 6SIGMA team looked at.  
 11 Mr. Bowes testified that he, the  
 12 6SIGMA team didn't come up with a fix for  
 13 Trans-Spec's problems and broadened out to look  
 14 at other flywheel housing failures and flywheel  
 15 house bolt failures, and what I'm asking is,  
 16 what was its conclusion, what was the fix for  
 17 C12 flywheel housing and flywheel house bolt  
 18 failures.  
 19 MR. GRUNERT: The problem with  
 20 the question is that it is assuming that there  
 21 are repetitive C12 flywheel housing failures on  
 22 trucks other than Truck Service's trucks.  
 23 That is to say that there is a

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1 problem that needs to be fixed.  
 2 MR. SAMITO: It's not assuming  
 3 that. It's saying in general what did the  
 4 6SIGMA team find as its final conclusion.  
 5 What did it say should be done to  
 6 prevent further problems, whether it's a  
 7 flywheel house that was perfectly fine or  
 8 whether it's one that has had multiple  
 9 failures; what was the final solution.  
 10 MR. GRUNERT: Again, I object to  
 11 the form. The question is unanswerable in that  
 12 form.  
 13 But if you, if you understand  
 14 what he's asking and if you can formulate an  
 15 answer to that question, go ahead and do so.  
 16 THE WITNESS: The team looked at  
 17 the failures across, you know, all of our  
 18 110,000 engines and our approach was to look  
 19 at, narrow it down to particular OEM's as  
 20 having a problem worse than others.  
 21 So the focus of our  
 22 investigation, not having unlimited resources,  
 23 was to look at that particular OEM and try to

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1 understand why they were having these failures.  
 2 And the investigation was ongoing  
 3 when litigation came in and we were halted in  
 4 doing so.  
 5 BY MR. SAMITO:  
 6 Q. What OEMs were having problems?  
 7 A. Sterling was having a failure rate higher  
 8 than the rest of the OEMs as well as Oshkosh  
 9 for the earlier, earlier description that I  
 10 talked about.  
 11 Q. What about other OEMs?  
 12 A. Other OEMs had failures, but not nearly to  
 13 the extent that Sterling did.  
 14 Q. Did Freight Liner have failures?  
 15 A. Yes.  
 16 Q. Did International have failures?  
 17 A. Yes.  
 18 Q. Did Kenworth have failures?  
 19 A. Yes.  
 20 Q. Did Peterbilt have failures?  
 21 A. Yes.  
 22 Q. Was it the same problem across the board?  
 23 In other words, were the failures in all the

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1 different OEMs being caused by the same  
 2 problem?  
 3 A. I don't know that. We did not investigate  
 4 each of the OEMs.  
 5 Q. What, what was causing the failures?  
 6 A. I don't know.  
 7 Q. Has the team ever found a root cause?  
 8 A. The team that was looking at this  
 9 particular issue did not, but as I mentioned  
 10 before in prior instances we had determined.  
 11 Q. How about with the Sterling's? Was there  
 12 a root cause with Sterling's?  
 13 A. I don't know what the root cause is.  
 14 MR. SAMITO: You want to go off  
 15 the record for a second?  
 16 (Discussion off the record.)  
 17 THE WITNESS: Okay.  
 18 (Exhibit No. 15 marked for  
 19 identification.)  
 20 BY MR. SAMITO:  
 21 Q. Exhibit 15 is Bates number S001370. It's  
 22 an e-mail from Brad Roden dated November 24th,  
 23 2003.

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1 It refers to a customer in  
 2 Tennessee that had a unit with three failures  
 3 and has 267,000 miles on it.  
 4 You mentioned before  
 5 participating I believe in the investigation or  
 6 being familiar at least in terms of this  
 7 Tennessee company's --  
 8 A. Uh-huh.  
 9 Q. -- three failures on the same engine.  
 10 Was there any specific reason why that was  
 11 happening? Why was it failing with such  
 12 frequency?  
 13 A. Yeah. I don't know the answer because we  
 14 were unable to, you know, commandeer the truck  
 15 to do any detail testing with it.  
 16 And he was at the end of the life  
 17 and willing, he was going to trade the truck  
 18 off from what I understand, shortly thereafter,  
 19 so we were unable to do any further testing.  
 20 We did send, we did send Aaron  
 21 Shofner down to look at the truck though.  
 22 Q. Did he report back to you?  
 23 A. Yeah. There was a report somewhere that

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1 he had written up. And he had digital  
 2 photographs in there of the truck and what he  
 3 had seen on the flywheel housing.  
 4 Q. What was the substance of that report?  
 5 A. It was a mixer truck. I'm sorry, a dump  
 6 truck, Sterling dump truck. And it had been  
 7 modified with two, I guess you call them helper  
 8 axles.  
 9 It had the two rear axles and  
 10 there was two additional axles put forward on  
 11 those rear axles that you could lower down.  
 12 Maybe it's, you have certain  
 13 weight requirements. You have to have so much  
 14 weight per axle to lower those axles down and  
 15 you can get by that requirement.  
 16 But he had those axles, those  
 17 axles were added after manufacture of the  
 18 truck.  
 19 But he rode with the operator of  
 20 the truck and didn't see any unusual, you know,  
 21 rough environments that he went through or  
 22 anything else.  
 23 And he commented the bolts were

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1 FYI.

2 If we want to get these housings  
3 back need someone from Product Health to call  
4 them back from Southworth Milton, Al Cardoza.  
5 What's that mean?

6 A. You said this is an e-mail from me?

7 Q. Look at the bottom, the bottom one.

8 A. Oh. That's typically, when we call parts  
9 back Product Health has that responsibility,  
10 and they have a parts return request that they  
11 need to issue to one of our dealers in order to  
12 get parts returned.

13 So it's just our normal process  
14 to get failed parts back to our claims room  
15 where you can look at them.

16 Q. And then up at the top there's an e-mail  
17 from L. Gregory Metz to you and a number of  
18 other people dated a couple hours later that  
19 same day and says; as Al mentioned in an e-mail  
20 he just said the customer bought these housings  
21 with his own money; these were not warranty  
22 repairs.

23 What that means is we have no

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1 authority to call these parts back under the  
2 standard warranty parts return system.

3 Did it help you remember if you  
4 learned anything regarding Caterpillar not  
5 reimbursing Trans-Spec for flywheel house or  
6 flywheel house bolt failures?

7 A. All, I think, yeah. At the time we read  
8 that it was out of warranty so it was, repairs  
9 were being done at the customer's expense.

10 Q. You thought this time that they were out  
11 of warranty?

12 A. I could have easily read it that way. I  
13 guess I don't know if I knew at the time.

14 Q. Is this the type of thing that you assumed  
15 would have been covered by warranty?

16 A. Well, we knew the engines were a little  
17 bit older engines and, you know, when this went  
18 out in 2004 they would have been four or five  
19 years old.

20 Standard warranty is two years.

21 So I guess I would imply by reading that that  
22 they were just out of warranty and that's why  
23 he had to pay for them on his own.

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1 Q. What if, what if they were still within  
2 warranty and correct, in 500,000 miles or five  
3 years would flywheel houses and flywheel house  
4 bolt failures been something covered under that  
5 warranty?

6 A. The extended service?

7 Q. Yeah. The extended service coverage.  
8 Five years, 500,000 miles.

9 A. Yeah. I think the, it does cover the  
10 flywheel houses. ESC coverage.

11 Q. So you just assumed that it was past, it  
12 was outside of that ESC coverage, the five  
13 years, 500,000 miles, which is why Trans-Spec  
14 was buying these with their own money?

15 A. Yeah. I don't know if that's what I  
16 thought at that time or not. I'm just reading  
17 it now that I could have, I could have thought  
18 that.

19 Q. And in the second paragraph there it  
20 mentions the idea of seeing about a, it implies  
21 some sort of deal with Sterling, right?

22 Some kind of restitution for the  
23 repairs from Sterling to Trans-Spec and hoping

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1 that that would mean Trans-Spec would be  
2 willing to let Caterpillar have the housings.

3 Was there any approaching of  
4 Sterling to see about facilitating this?

5 A. I believe that was Troy or a rep in the  
6 field that would have approached Sterling, and  
7 it talks about talking with their reps.

8 I don't, yeah, I believe that's  
9 what that implied.

10 Q. Did Troy try, is that a situation where  
11 Sterling may pay half the repair costs and  
12 Caterpillar would pay half the repair costs?

13 A. He I believe had, he's talking here about  
14 he was having a meeting with them to discuss  
15 just that, but I don't know that that was ever  
16 arranged.

17 We weren't privy to the meeting  
18 or really the contents of it.

19 (Exhibit No. 19 marked for  
20 identification.)

21 BY MR. SAMITO:

22 Q. I want to look at the second page which is  
23 marked S001506. It's an e-mail from Al